

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	§	
	§	
CYRUS II, L.P., BAHAR DEVELOPMENT, INC., and MONDONA RAFIZADEH	§	Jointly Admin. Under Case No. 05-39857-H1-7
	§	
Debtors.	§	(Chapter 7)
	§	
<hr/>		
	§	
RODNEY D. TOW, AS THE CHAPTER 7 TRUSTEE, <i>ET AL.</i>	§	Adversary Proceeding No. 07-3301
	§	
Plaintiffs.	§	
	§	
v.	§	
	§	
SCHUMANN RAFIZADEH, <i>ET AL.</i> ,	§	
	§	
Defendants.	§	

**SCHUMANN RAFIZADEH’S REPLY TO RESPONSE TO MOTION FOR SUMMARY  
JUDGMENT ON CONSPIRACY OR AIDING AND ABETTING**

[Relates to Docket Nos. 795 and 876]

This is Schumann Rafizadeh’s reply to Plaintiffs’ response to his Motion for Summary Judgment on Conspiracy and Aiding and Abetting Fraudulent Transfers (Docket #795 “Motion” and #876 “Response”). Plaintiffs admit that summary judgment is appropriate on the issue sought, that they may not recover for any aiding and abetting or conspiracy to make fraudulent transfers, but rather only for breach of fiduciary duty:

**Summary**

1. Plaintiffs can be forgiven for making a mistake while drafting their voluminous complaint. The complaint in its various iterations and amendments repeatedly states that there was a “conspiracy” and that Defendants “aided and abetted” “fraudulent transfers”. Based on the clear language of the complaint, Schumann and other Defendants sought summary judgment that Plaintiffs were not entitled to recover on any claim for aiding and abetting or conspiring to

commit fraudulent transfers. Plaintiffs now concede that the only basis for aiding and abetting or conspiracy claim is a breach of fiduciary duty. Accordingly, summary judgment is proper on the issues raised as the summary judgment simplifies the issues to be tried and conserves judicial resources.

**The Complaint States “Aiding and Abetting” and “Conspiracy” for Fraudulent Transfers**

2. The Plaintiffs would have the Court believe that a summary judgment was filed as to a non-existent claim. The text of the complaint destroys that hypothesis.

3. The complaint states, repeatedly, that the gravamen is to recover for a conspiracy to commit fraudulent transfers (such transfers may or may not have breached any fiduciary duties)

- a. Moreover, **some or all of the Defendants have participated in a conspiracy to transfer former Debtor and URF assets overseas**, notably through transfers to Wellspring Sourcing and Vafa Motlagh in China, Flash VOS Pty in Australia, and One World Future Pty in Australia. ¶562.
- b. **assisting, aiding, encouraging, abetting and conspiring with Schumann Rafizadeh** to breach his fiduciary duties to BDI **and to defraud BDI’s creditors through intentional fraudulent transfers**. ¶ 96.
- c. **knowingly and intentionally assisted, aided, encouraged, abetted and conspired** with the Rafizadehs to breach their fiduciary duties to BDI **and to defraud BDI’s and Mondona Rafizadeh’s creditors through intentional fraudulent transfers**. ¶ 114.
- d. URF, Rafizadeh, LLC, Flash VOS, COOB and COOBGP, LLC knowingly participated in the BDI/URF Transfers, the BDI/URF Note Transfers, the BDI/FV Transfers and the BDI/COOB Transfer, **assisting, aiding, encouraging, abetting and conspiring with Schumann Rafizadeh** to breach his fiduciary duties to BDI **and to defraud BDI’s creditors through intentional fraudulent transfers**. ¶ 290.
- e. The Alphabet Soup Entities knowingly received the assets fraudulently transferred from BDI, **assisting, aiding, encouraging, abetting and conspiring with Schumann Rafizadeh** to breach his fiduciary duties to

BDI **and to defraud BDI's creditors through intentional fraudulent transfers.** ¶ 291.

- f. Moreover, **some or all of the Defendants have participated in a conspiracy to transfer former Debtor and URF assets overseas,** notably through transfers to Wellspring Sourcing and Vafa Motlagh in China, Flash VOS Pty in Australia, and One World Future Pty in Australia. ¶649.

Original, First Amended and Second Amended Complaints (emphasis added)

4. The gravamen of these counts of the complaint, indeed, is a claim for conspiracy that 1) breached fiduciary duties and 2) made fraudulent transfers. The use of the word “and” clearly indicates a second prepositional phrase as the object of the verbs “aiding” and “conspiring”. Whether Plaintiffs meant to or not, they plead for relief from parties allegedly “aiding” “Schumann Rafizadeh” “to defraud” “through intentional fraudulent transfers”.

**Plaintiffs Concede the Motion**

5. Plaintiffs state that the Defendants have mis-read the complaint and the Plaintiffs concede that they are not seeking to recover for conspiring to make or aiding and abetting fraudulent transfers. Rather, Plaintiffs argue they are only seeking damages based on breaches of fiduciary duty and conspiracies related thereto.

6. Plaintiffs also allege alter ego is an appropriate remedy for this breach of fiduciary duty conspiracy. Logically, no alter ego remedy can be based on a non-existent conspiracy for fraudulent transfers. The Court's alter-ego analysis may be shortened by the Plaintiffs' concession that they are not alleging a conspiracy to commit fraudulent transfers.

7. Defendants are entitled to a summary judgment that, notwithstanding language in the complaint that clearly alleges liability for conspiracy or aiding and abetting transfers, the Plaintiffs are only entitled to recover for conspiracies or aiding and abetting breaches of fiduciary duties. The elements of a cause of action under TUFTA are different for those of breach of

fiduciary duty. The limitations periods are also computed differently. The Plaintiffs' must prove all of the elements of a claim for breach of fiduciary duty and justify the expiration of the applicable limitations period for that cause of action, not fraudulent transfer.

**Mr. Rafizadeh has Standing**

8. Oddly, though Mr. Rafizadeh is named as a member of the alleged conspiracy in every allegation of conspiracy (see paragraphs 564, 96, 114, 290, 291 and 649), Plaintiffs allege he "lacks standing" to object to the claim for conspiracy.

9. Constitutionally, Mr. Rafizadeh has Article III standing to object because he is a defendant and an individual who has been sued in the United States courts with a right to appear and be heard. Prudentially, Mr. Rafizadeh has standing to object because he is literally named as a conspirator. Mr. Rafizadeh has standing under any definition of standing.

10. The cases cited by Plaintiffs in support of their proposition are inapposite to the present situation. *Scottsdale Ins. Co. v. Knox Park Constr. Co.*, 488 F.3d 680 (5<sup>th</sup> Cir. 2007), cited by plaintiffs, holds that an insured who has no prospect of losing or winning money (because of a release) cannot participate in a suit. Here, Schumann has not been released and his money is at risk (as is that of his alleged conspirators).

11. Plaintiffs seek alter-ego remedies against Schumann and the other alleged conspirators. Thus, any damages sought against the other conspirators are also sought against Schumann. Plaintiffs omitted that crucial fact from their standing analysis.

12. Also, Plaintiffs cite the Ninth Circuit's 1957 opinion of *In re Martin*, 248 F.2d 530 (9<sup>th</sup> Cir. 1957), which deals with a defendant who sought a dismissal not just for himself, but for defaulted non-answering defendants. The case at bar involves defendants who have answered and jointly defended the common issues of being part of the same conspiracy.

13. Under every equitable and legal principle under which the judicial system operates, Mr. Rafizadeh has the right to seek a summary judgment that he is not part of the conspiracy to which Plaintiffs have specifically named him as a conspirator. Plaintiffs' claim to the contrary is beyond cavil.

WHEREFORE, Mr. Rafizadeh prays that the Court grant summary judgment on all claims relating to conspiracies and aiding and abetting fraudulent transfers as sought in his motion for summary judgment (Docket #795).

Dated: November 3, 2008

Respectfully Submitted,

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Hugh M. Ray, III  
EDWARD L. ROTHBERG  
State Bar No. 17313990  
HUGH M. RAY, III  
State Bar No. 24004246  
Eleven Greenway Plaza, Suite 1400  
Houston, TX 77046  
Telephone: (713) 961-9045  
Facsimile: (713) 961-5341  
ATTORNEYS FOR SCHUMANN RAFIZADEH

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail and/or first class mail, postage prepaid, on November 3, 2008, on the following parties:

**Chapter 7 Trustee:**

Rodney Tow  
Tow & Koenig, PLLC  
26219 Oak Ridge Drive  
The Woodlands TX 77380

**Chapter 7 Trustee's General Counsel:**

Joseph M. Hill  
Timothy Wentworth  
Cage, Hill & Niehaus  
5851 San Felipe, Suite 950  
Houston, Texas 77057

**Chapter 7 Trustee's Counsel:**

Gary Cruciani  
Leonard A. Hirsch  
Karen E. Sprole  
Diamond McCarthy Taylor Finley & Lee LLP  
1201 Elm Street, Suite 3400  
Dallas, TX 75270

Kyung S. Lee  
Jason M. Rudd  
Clifford H. Walston  
Two Houston Center  
909 Fannin, Suite 1500  
Houston, TX 77010

**Counsel for Rodrick L. Hughes and Main & Marietta, LP:**

Stephen H. Kupperman  
Barrasso Usdin Kupperman Freeman & Sarver,  
L.L.C.  
909 Poydras Street, Suite 1800  
New Orleans, LA 70112

Andrew R. Harvin  
Peter B. Wells  
Doyle, Restrepo, Harvin & Robbins, LLP  
JPMorgan Chase Tower  
600 Travis Street, Suite 4700  
Houston, TX 77002

**Counsel for Azita Management and Azita Berglund:**

Jeffrey Wayne Glass  
8980 Lakes at 610 Drive, Suite 250  
Houston, TX 77054

**Counsel for Universal Sourcing, LLC:**

Barnet B. Skelton, Jr.  
Barnet B. Skelton, Jr., P.C.  
1111 Bagby, 47th Floor  
Houston, TX 77002

**Counsel for Keycorp**

Matthew S. Okin  
Okin & Adams LLP  
1113 Vine St., Suite 201  
Houston, Texas 77002

**Counsel for Super Future Equities, Inc.:**

Jon P. Bohn  
Bohn & Ducloux  
806 Main Street, Suite 1411  
Houston, TX 77002

**Counsel for ORIX Capital Markets, LLC:**

Nan Roberts Eitel  
Jones Walker Waechter Poitevent Carrère & Denègre, LLP  
The Watergate  
2600 Virginia Avenue, NW, Suite 1113  
Washington, DC 20037

David C. Mattka  
Munsch Hardt Kopf & Harr, PC  
One American Center  
600 Congress Avenue, Suite 2900  
Austin, TX 78701-3057

Ben B. Floyd  
Randall A. Rios  
Lynn Chuang Kramer  
Munsch Hardt Kopf & Harr, PC  
Bank of America Center  
700 Louisiana, 46th Floor  
Houston, TX 77002

/s/ Hugh M. Ray, III  
HUGH M. RAY, III

